IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-151

In the Matter of

MURRAY GLANTZ, An Attorney,

Petitioner,

—v.—

THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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Statement

On September 11, 1972, respondent initiated a proceeding against petitioner in the Appellate Division of the Supreme Court of the State of New York, First Judicial Department, in which respondent charged petitioner with professional misconduct (17a*). The jurisdiction of the court derived from Section 90 of the Judiciary Law of New York.

The court appointed a referee to take testimony as to the charges and to report the same with his opinion to

* All such references are to the pages in the Petition and its Appendix.

the court. The referee held a hearing at which petitioner had full opportunity to present evidence,* and thereafter rendered his report to the court on September 3, 1975. (17a)

The facts relevant to the instant proceeding, as reported by the referee (2a to 14a), found by the court (21a to 23a) and conceded here by petitioner (3-4), are as follows.

In 1961 petitioner, a New York attorney-at-law, accepted a referral of a personal injury case, the *Farr* case, from attorneys Schachter and Eisenberg (5a), and commenced an action on it which was transferred by the defendant to the United States District Court. (6a)

On or about May 14, 1963, the defendant in the *Farr* case moved, on notice to petitioner as the attorney for the plaintiff, to dismiss the case for failure to prosecute. (6a)

Petitioner defaulted on the motion, which was granted by an order of July 2, 1963 dismissing the case for failure to prosecute. (22a)

> "... from the time of entry of the dismissal order on July 2, 1963, until at least the beginning of 1964, [petitioner] failed to take any steps to restore this matter to the calendar or to advise the forwarding attorneys or Ms. Farr [the client] of the dismissal." (22a)

At the beginning of 1964, petitioner returned the dismissed *Farr* case to the forwarding attorneys, who then gave Ms. Farr "false representations as to the status of the case" (12a) and allowed the statute of limitations to run. (11a-12a)

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* The statement in the petition that the court acted "without affording [petitioner] any hearing whatsoever . . . by way of calling witnesses" (10) is therefore ambiguous and misleading.

On the basis of these facts, it is clear that petitioner was guilty of professional misconduct, i.e., neglect of his client's case. However, while reporting all of the foregoing facts, the referee, nevertheless reported to the court that, in his opinion, petitioner was not guilty of professional misconduct in relation to the *Farr* case because the conduct of the forwarding attorney, Schachter, after the case was returned to him, was worse than that of the petitioner. Respondent "would have had a much stronger case for discipline against Schachter than [it] had against [petitioner]." (12a) The referee's conclusion was obviously erroneous since the professional misconduct which respondent committed was not erased by the fact that the forwarding attorney may have done worse.

Because of this obvious legal error, the court had no choice but to disaffirm its referee's report and find petitioner guilty of professional misconduct in the *Farr* case which it did, saying: "The possibility that the forwarding attorney did not expeditiously act upon receipt of the file to initiate a motion to vacate the default, even if proved, may not serve to alter or negate the [petitioner's] neglect." (22a)

The court thereupon made an order, January 15, 1976, suspending petitioner from the practice of law for three months, effective February 16, 1976. (19a) On February 26, 1976 the court denied petitioner's motion for leave to reargue (24a) and on May 4, 1976 petitioner's motion for leave to appeal to the New York Court of Appeals was denied. (1a)

By reason of a stay, petitioner's three month suspension did not commence until May 13, 1976. (1)

ARGUMENT

POINT I

There is no reaon for the granting of a writ of certiorari in this case. Petitioner's constitutional claims have neither weight nor merit.

1.

Petitioner admits committing acts constituting neglect of his client's cause (3-4). Neglect of a client's cause is universally recognized as professional misconduct. DR6-101(A)(3) of the Code of Professional Responsibility reads:

> "A lawyer shall not: . . . 3. Neglect a legal matter entrusted to him."

DR1-102, which is titled "Misconduct", reads:

> "A lawyer shall not: 1. Violate a Disciplinary Rule."

The action of the New York court at bar in imposing discipline upon petitioner for admittedly neglecting a client's cause is therefore reasonable and constitutionally proper. The extent of the discipline imposed, a suspension of three months, is, beyond question, of a mildness which prevents any claim of constitutional unreasonableness. This being so, the discipline imposed on petitioner at bar would be constitutionally proper no matter what defects there might be in the disciplinary procedures followed at bar or provided generally by New York law.

In short, petitioner has not been hurt by any of the alleged constitutional defects he claims exist.

2.

However, petitioner's broadside attack on New York disciplinary procedures is in fact without merit or weight. All of the attacks he makes (but one, discussed below) were made, and carefully considered by a three-judge federal court, and rejected in a well-considered opinion which was recently affirmed in a direct appeal to this court. *Mildner* v. *Gulotta,* 405 F. Supp. 182 (EDNY 1975), affirmed —— U.S. —— (March 29, 1976).

3.

Petitioner raises one point not raised in *Mildner* v. *Gulotta.* In its Memorandum to the court in support of its motion to disaffirm the referee's report, respondent inserted a separate section reading as follows:

> *"Prior Discipline*
>
> "1. On November 26, 1968, respondent was admonished by Petitioner's Committee on Grievances for issuing worthless checks.
>
> "2. On December 3, 1970, respondent was issued a letter of admonition for permitting a layman to use his status as an attorney and also for issuing worthless checks.
>
> "3. On November 2, 1970, respondent was admonished by the Committee on Grievances for neglecting six negligence matters referred to him by another attorney and for falsely representing the status of these matters to that other attorney.
>
> "4. On December 7, 1971, respondent was issued a letter admonition for the conduct of his office staff and hanging up on inquiries from people who called to inquire regarding their bill."

The information as to these prior admonitions was not before the referee, but was submitted to the court for consideration on the issue of the extent of discipline to be imposed.

In its memorandum decision, the court said on the point:

> "It is also noted that respondent has a history of previous letters of admonition issued by the Grievance Committee in lieu of presenting formal charges. As to these circumstances, it is noted in *Matter of Wildove* v. *New York State Bar Association,* 40 AD 2d 1042, 1043 (3rd Dept., 1972) 'that such information as to the similar disposition of prior complaints of professional misconduct is always relevant and material on the question of the degree of punishment warranted for subsequent misbehavior.' The fact that attention is properly called by petitioner to such prior discipline may not serve as the predicate for granting respondent's request to transfer this matter to another Department on the ground of prejudice."

Petitioner here argues that his rights were violated by the submission to the court of the information as to prior admonitions. He says that he had no opportunity "to confront them or answer them". (20)

This argument is factually incorrect.

Petitioner had the opportunity, in his written submission in opposition to respondent's motion to disaffirm the referee's report, to confront and answer the prior admonitions in writing; if there was anything about any one of them he wished to dispute, he could have done so. However, as is evident from the above quotation from the memorandum

opinion of the court, petitioner did not attack these admonitions on the merits.

Further, when the admonitions were issued petitioner had full opportunity to attack them on the merits. He failed to take those opportunities, and, in effect accepted the admonitions, which are, therefore, properly useable against him in connection with the extent of discipline to be imposed.

Two of the admonitions were issued by respondent's Committee on Grievances. These were issued after full hearings at which petitioner had the opportunity to be present in person and by counsel, to confront witnesses, etc. They are therefore binding upon petitioner. Further, petitioner had the right, which he did not exercise, to have the propriety of the admonitions tested in the courts by means of a proceeding under Article 78 of the New York Civil Practice Law and Rules.

The other two admonitions were issued by the Chief Counsel of respondent's Committee on Grievances.

According to the procedures of the Committee on Grievances, a copy of which was sent to petitioner when respondent's investigations were initiated:

> "Letter admonitions, signed by the Chief Counsel, are sent in instances where the staff investigation discloses relatively minor misconduct. If, upon receipt of such a letter admonition, the respondent-attorney disputes the conclusion that he has not acted properly, he may request a formal hearing before the Committee."

In neither case did petitioner request a formal hearing.

Petitioner's argument to this court concerning these admonitions does not, therefore, have either weight or merit.

CONCLUSION

The petition for a writ of certiorari should be denied.

Dated: New York, N. Y.
August 24, 1976

Respectfully submitted,

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